

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-206780

DATE: June 7, 1982

118617

MATTER OF: Snyder Pneumatics, Inc.

DIGEST:

1. Solicitation clause providing for a listing of a bidder's foreign source components did not go to the determination of the conformance of the bid to the material requirements of the solicitation. Rather, information was requested to facilitate proper evaluation of bid prices with respect to the Buy American Act, which requires that a price differential be added to the contract price of publicly acquired supplies manufactured or substantially manufactured outside the United States.
2. GAO finds no basis for protester's contention that the failure of the low bidder to provide a listing of foreign source components precluded the protester from filing a timely protest against acceptability in terms of Buy American Act of low bidder's bid. Protester's contention is based on the unwarranted assumption that 10 working days from which to file such a protest under GAO's Bid Protest Procedures, 4 C.F.R. part 21 (1981), begin to run from the date of bid opening.

Snyder Pneumatics, Inc. (Snyder), protests the award of a contract under invitation for bids (IFB) FTN-FP-23400-A-2-17-82 issued by the General Services Administration (GSA). The IFB was for the supply of 1,228 wrench kits manufactured in accordance with Federal specifications.

Snyder contends that the failure of the low bidder, American Kal Enterprises, Inc. (American), to provide a listing of foreign source components in the wrench kits as required by clause 805 of the IFB is a "fatal defect" which renders the bid nonresponsive. Snyder also contends that a bidder's failure to provide

information regarding foreign source components, such as American's, precludes other bidders from timely protesting the overall acceptability of the bidder's bid in terms of meeting the requirements of the Buy American Act, 41 U.S.C. § 10a-10d (1976).

For the reasons set forth below, we deny Snyder's protest.

Seven bids were received and American was the apparent low bidder. However, in response to clause 805 of the IFB, American's bid stated "To be provided at time of PFR" (Plant Facilities Report). On February 18, 1982, GSA's Quality Assurance Specialist requested a PFR and a Financial Responsibility Report on American to determine the company's capability of performing in accordance with the IFB's terms and to determine a cost breakdown of foreign versus domestic materials in American's wrench kit. On February 22, 1982, representatives of Snyder submitted a Freedom of Information Act request to GSA for a copy of the Plant Facilities Report on American regarding the IFB. Snyder alleges that to date the request has not been answered by GSA.

By letter dated February 25, 1982, Snyder protested the responsiveness of American's bid to the contracting officer. By letter dated March 10, 1982, the contracting officer denied Snyder's protest concluding that American's failure to complete clause 805 of the IFB did not render the company's bid nonresponsive. On March 22, 1982, Snyder filed a protest with this Office.

Snyder argues that the language of clause 805 of the IFB is imperative in nature, that is, information regarding foreign source components must be stated in the bid. Therefore, Snyder asserts that the failure to furnish this mandatory information makes a bid nonresponsive.

As to the effect that the failure to furnish the above-described information has on a bidder's ability to file a timely protest, Snyder alleges that while GSA procedures require that the agency's Quality Control Division submit a PFR to the contracting officer within 15 working days after the report is requested, PFR's are frequently not received until

60 days after they are requested. Snyder emphasizes that under our Bid Protest Procedures, 4 C.F.R. part 21 (1981), it has only 10 days after its cause of action becomes known or should have become known to file a protest with our Office that will not be rejected as being untimely. In this regard, Snyder feels that the date on which its cause of action becomes known is the date of bid opening. Therefore, Snyder asserts that since PFR's are not generally received until 60 days after they are requested, no protest utilizing the information in these reports would be timely because the 10 days after opening would have long since passed.

GSA asserts that clause 805 of the IFB is optional because the clause only provides informational assistance to the agency in the evaluation of bid prices. GSA points out that the Buy American Act certificate American submitted with its bid stated that the company was providing a domestic source end product. GSA further notes that while clause 340 of the IFB required that a price factor be added to the bid of a firm not proposing to supply a domestic source end product, the information upon which the determination of whether a bidder is in fact providing a domestic source end product is obtained in the course of preparing the PFR. Finally, GSA takes the position that American's bid is responsive, that American has no end products excluded from its Buy American Act certificate, and that American's bid created no ambiguity regarding the correctness of the company's Buy American Act certificate.

We do not think that American's bid was rendered nonresponsive by the failure to complete clause 805 of the IFB. In our opinion, the purpose of the information requested in clause 805 did not go to the determination of the conformance of the bids to the material requirements of the IFB. Rather, this information was requested to facilitate GSA in the proper evaluation of bid prices with respect to the Buy American Act, which requires that a price differential be added to the contract price of articles, materials and supplies manufactured or substantially manufactured outside the United States and acquired for public use. See International Salt Company, B-200128, January 7, 1981, 81-1 CPD 142. Moreover, we note that clause 805 does

not call for bidders to submit any cost data on the foreign source components. Under the regulations implementing the Buy American Act, the cost of the components is the factor determining whether the end item is domestic or foreign. See Federal Procurement Regulations § 1-6.101(d) (1964 ed., amend. 209). Thus, we agree with GSA that clause 805 provides only informational assistance to the agency in its evaluation of bids. See C. R. Fedrick, Inc., 58 Comp. Gen. 493 (1979), 79-1 CPD 309.

Turning to Snyder's argument concerning its inability to file a timely protest against the acceptability of another bidder's bid, in terms of the Buy American Act, we find that it rests on the assumption that such a protest must be filed within 10 working days from bid opening. Additional facts not available from the face of the bids are usually needed in order to ascertain the cost of a bidder's foreign components in relation to the cost of a bidder's domestic components. Until these additional facts are obtained, no ground of protest exists. We see no basis, then, for Snyder's assumption that the 10 working days for filing a protest with our Office begin to run from the date of bid opening.

We deny Snyder's protest.

Milton J. Fowler
for Comptroller General
of the United States